

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

NO: CR 05-1849 JCH

DANA JARVIS, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

August 6, 2008

BEFORE: HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

1 APPEARANCES

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18 Defendant Dana Jarvis appeared in person.
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1 (Court in session at 9:49 a.m.)

2 THE COURT: Please be seated. Good
3 morning. We are on the record in USA vs Jarvis,
4 et al., CR 05-1849. Could I get appearances,
5 please?

6 MR. BRAUN: Good morning, Your Honor.
7 James Braun on behalf of the United States.

8 MR. MITCHELL: Good morning, Your Honor.
9 Gary Mitchell and Jody Post-Neal on behalf of
10 Mr. Jarvis.

11 MR. BLACKBURN: Good morning, Your Honor.
12 Billy Blackburn on behalf of Greg Hill. And I will
13 waive his appearance for the status conference, Your
14 Honor.

15 THE COURT: All right.

16 MR. SIZEMORE: Good morning, Your Honor.
17 Vic Sizemore for Bill Jones. We would also waive
18 his appearance for the status conference.

19 MR. GORENCE: Good morning, Your Honor.
20 Robert Gorence on behalf of Dennis Wilson. And I
21 will waive his appearance as well.

22 MR. DAVIDSON: Good morning, Your Honor.
23 Scott Davidson, Associate Research Counsel for the
24 CJA defendants.

25 MR. DEMAREST: Richard Demarest on behalf

1 of defense for discovery.

2 MR. KIRCHNER: Good morning, Your Honor.

3 I'm Bill Kirchner. I'm on the telephone. I hope

4 I'm not speaking out of order here, but I represent

5 Mr. Reid, who is not present. He's out of custody,

6 and we would waive his presence.

7 THE COURT: All right. Mr. Blackburn.

8 MR. BLACKBURN: Your Honor, in a previous

9 pleading that Mr. Nash had filed concerning a status

10 memorandum, he had indicated that I was going to

11 stand in for him today because Mr. Kirchner had a

12 medical problem.

13 But that has subsided, so Mr. Kirchner

14 will appear on behalf of Mr. Nash. I may have some

15 other comments, but he is present for Mr. Reid and

16 Mr. Nash.

17 THE COURT: All right. This is a status

18 conference that I set up because I want to discuss

19 primarily scheduling. But before we get to that,

20 let me ask about a couple of housekeeping things.

21 First, let me ask Mr. Braun: Do you have

22 any idea yet when I can expect your response to

23 Defendant Jarvis' motion for release?

24 MR. BRAUN: We can get that filed as soon

25 as the Court likes, in a week or two weeks.

1 THE COURT: Well, you just tell me when I
2 can expect it.

3 MR. BRAUN: By next Friday.

4 THE COURT: So I can expect it by
5 the 15th?

6 MR. BRAUN: Yes.

7 THE COURT: All right. The other thing I
8 wanted to ask you all about before we get to
9 scheduling issues is, I have -- I mean I realize
10 that there are a number of defendants who have
11 entered pleas, changed their pleas, and some of whom
12 have filed motions in this case, motions that other
13 of you have joined.

14 So one thing I'd like you all to address,
15 not today, but if you could get back to me on what
16 motions at this point -- which motions are high
17 priority, which motions are outstanding that you
18 need a ruling on, whether it's a motion that you
19 filed or whether it's a motion that somehow you
20 joined. I think there is a fair amount of
21 repetition here. But I would like to try to clean
22 that up as much as possible.

23 So if you all could get back to me on the
24 motions that you all consider to be outstanding and,
25 in addition, pressing, so that I can turn my

1 attention to those as well.

2 And the last thing I wanted to mention
3 before we get to scheduling is, I did receive a
4 suggestion -- and I can't remember which of you gave
5 it to me; it may have been Mr. Mitchell -- about
6 possibly finding some benefit in some sort of a
7 settlement conference.

8 Do any of you feel that that would be
9 useful? And I am willing to see if I can find
10 another district judge who would be willing to take
11 this on. I don't want to move in that direction
12 unless you all feel there would be some benefit to
13 it.

14 Mr. Mitchell.

15 MR. MITCHELL: Your Honor, based on
16 counsel nodding their heads and my prior
17 conversations with most of them, we think that would
18 be advantageous in this particular matter. And
19 sooner, rather than later.

20 THE COURT: That was my next question.
21 All right. Okay. Well, I will --

22 MR. MITCHELL: Excuse me, Your Honor.

23 THE COURT: Yes. Mr. Mitchell.

24 MR. MITCHELL: May I have one of
25 Mr. Jarvis' handcuffs or his right hand removed so

1 he can make notes so I don't have to confer across
2 the table with him and he can write the notes?

3 THE COURT: Yes. Could you please release
4 his writing hand?

5 THE DEPUTY MARSHAL: Judge, if that's your
6 order, I can do that --

7 THE COURT: That's my order.

8 THE DEPUTY MARSHAL: I have been
9 instructed to make a record that that's against
10 Marshal policy.

11 THE COURT: The record has been made and
12 noted. If you could just release his writing hand.

13 MR. MITCHELL: Your Honor, I don't know if
14 Mr. Braun is okay with that.

15 MR. BRAUN: If it might be helpful, then
16 that's fine.

17 The government's only concern would be the
18 effect of Rule 11 on that and whether Rule 11
19 prohibits any judge in this district from engaging
20 in the plea negotiation process. And that's
21 something perhaps we could look into before we
22 proceed down that path.

23 MR. MITCHELL: Your Honor, we've had
24 experience in this district. I think Mr. Gorence is
25 nodding his head. I know what the other counsel

1 that are present -- I've had that experience, and
2 we've done that in these complex cases before and
3 it's worked well. And with appropriate waivers and
4 such, I think we can accomplish that either through
5 a magistrate or a district judge, if you could find
6 one that would be willing to do it.

7 THE COURT: Well, that will be a
8 challenge. But I'm willing to see if I can find
9 someone.

10 MR. MITCHELL: Judge Parker did it in the
11 case that I'm familiar with.

12 THE COURT: He's who I was thinking of as
13 well. I will ask him. I know he's had some health
14 issues, so I frankly don't know one way or the other
15 what his availability may be. But I will ask him.

16 MR. MITCHELL: That's an excellent idea.

17 THE COURT: All right. Then to move on to
18 the primary purpose for this status conference,
19 which is scheduling, now I've set this trial for
20 January 26, 2009, and I did establish all my
21 standard pretrial deadlines.

22 I realize that this case is not a standard
23 case, but I wanted to have a trial setting just to
24 have something to work off of. So I did review the
25 status letter from -- or not letter, but the status

1 memorandum that was filed in this case by Defendant
2 Reid. And I did see his position that January may
3 not be a realistic date, but I want to hear from you
4 all.

5 Mr. Braun.

6 MR. BRAUN: The government is fine with
7 that date, Your Honor. I think that gives us about
8 six months' advance notice to clear our schedules
9 and to do what needs to be done to get ready for
10 trial.

11 I think that a remaining motion to be
12 filed, I believe, is a motion to suppress the
13 wiretap. If the deadline for that is in October,
14 that gives the defense two months to prepare their
15 motion.

16 Where we left off last, I believe the
17 motion to suppress the wiretap was due February 15th
18 of '07. And that deadline wasn't lifted until just
19 a couple days before then, when the case was stayed.
20 So it's not unrealistic to allow the defendants a
21 full two months to prepare their motion, perhaps
22 have hearings in November and December, and then be
23 ready for trial in January.

24 And the government does not oppose
25 expanding the normal deadline for disclosure of

1 witness and exhibit lists to, say, 30 days prior to
2 trial. And that would give the parties plenty of
3 time to confer and talk about stipulations.

4 THE COURT: All right. Let me hear from
5 defense counsel. Let's start with Mr. Mitchell.

6 MR. MITCHELL: Your Honor, I have
7 conferred with counsel for the remaining defendants
8 as well. And we think Mr. Nash is correct, that a
9 January trial date is unrealistic in this matter.

10 And certainly two weeks, Your Honor, is
11 unrealistic. I think even the government agrees
12 that this case will probably take, at a minimum,
13 four weeks. And I would estimate that we should set
14 aside six weeks, at least.

15 And of course, that depends on a number of
16 factors. It depends on how much cooperation and how
17 much disclosure we're going to get regarding
18 cooperating witnesses and who they're going to call
19 on the wiretap information, which wiretaps they
20 think they're going to it use.

21 Let me point out a couple of things for
22 the Court in that regard. We're familiar with, but
23 I think sometimes we forget that the judge isn't
24 necessarily familiar with everything that we're
25 familiar with in this particular instance. But

1 there's 260 hours of wiretaps, 11,000-plus calls.

2 Obviously, if the government comes in and
3 tells us, "These are the wiretaps that we're going
4 to concentrate and on we're going to attempt to
5 utilize," that makes it much easier and it makes us
6 much more efficient and frankly, costs less and
7 makes for better trial efficiency.

8 Now I know that there's counsel that have
9 conflicts in January with other trials, as Mr. Nash
10 mentioned. I always have a conflict, personally.
11 But I'm so used to dealing with that, you know, once
12 you give me a setting and I say that's top priority,
13 I alert everybody else and I just say, "Hey, I can't
14 do that."

15 But I like to have that well in advance so
16 I'm not interfering with another judge that's done
17 the same thing before you set yours.

18 But I do anticipate that January is
19 unrealistic. I think defense counsel are talking
20 about the summer, at the earliest, before we could
21 do that. And my suggestion to the Court is that,
22 for example, on behalf of Mr. Jarvis, we know
23 that -- and we'll be happy to provide you with the
24 exact motions that still need to be ruled on, those
25 that would require a hearing. But I know that

1 there's 20 plus of those motions that we have
2 pending.

3 In addition, I do think that depending on
4 how much notice and frankly, how strict the
5 government is in telling us which wiretaps they're
6 going to utilize, that will either shorten or
7 lengthen the hearing that's going to be necessary in
8 that matter.

9 And our preparation of affidavits in that
10 regard takes far longer than what most people
11 anticipate. It certainly will take an extremely
12 lengthy period of time if we don't narrow this
13 wiretap information down to what the government is
14 going to utilize.

15 Now speaking for Mr. Braun, I think that
16 he's certainly amenable to try and accomplish
17 something in that regard. I will applaud all the
18 counsel that we've gone through and were provided --
19 we've gone through some 70,000 pages of documents
20 and such that we have available through
21 Mr. Demarest, that he can call up for us when we're
22 in trial rather rapidly. With twelve strokes on his
23 computer, he can have that available for us.

24 So there's been a tremendous amount of
25 work already done, but there's still a lot of heavy

1 lifting yet to go.

2 Most of the Brady information, Mr. Braun
3 advises me and in conferring with counsel, has been
4 given regarding these cooperating witnesses.
5 There's still some to come, and there's still some
6 disclosure yet to be made regarding presentence
7 reports and such that we don't have that the Court
8 hasn't sentenced on or there are certain defendants
9 that are not set for sentencing yet.

10 But be that as it may, that information is
11 still -- a lot of it has been disclosed, and there's
12 still some forthcoming.

13 I think the better suggestion for
14 scheduling, Your Honor, is this: Is that we set
15 aside January, and we go back from January and we
16 set aside January for hearings on all of these
17 motions -- and frankly, even on the wiretap
18 motion -- and we go back from that January setting
19 and set deadlines for when those motions are to be
20 filed and when certain disclosures are to be made.

21 And let me address something else. Thirty
22 days before trial in a complex case may seem like a
23 lot of time for disclosing exhibits and witnesses
24 and such. But frankly, in these complex cases it's
25 really not.

1 If we want to make it really efficient, I
2 have worked with counsel, defense counsel that are
3 here, with the exception of the Arizona counsel, a
4 number of times. And I know that all of us have a
5 tendency to be very efficient if we have sufficient
6 time to go through the information first.

7 And this is the type of trial in which the
8 greater advance time we have, the more efficient the
9 trial becomes. And in this case, we could literally
10 bore a jury to tears with all of the thousands and
11 thousands of bank documents and such that may be
12 introduced at this trial.

13 So I'm suggesting to the Court that with
14 the cooperation from the government and with the
15 Court giving us earlier deadlines, the trial would
16 be much more efficient.

17 THE COURT: What are you suggesting?
18 Mr. Braun suggested 30 days, but I'm not quite sure
19 what you're talking about.

20 MR. MITCHELL: Mr. Blackburn just
21 whispered 90 days to me, and I think that's
22 appropriate. I don't have a problem with 90 days.
23 Ninety days would be far better for all of us
24 involved.

25 And I think you'll find, Judge, that

1 you'll have a lot more stipulations if we can do it
2 that way than before. Because none of us want to
3 stand up here and interrupt trials with hearings at
4 the bench, if we can avoid it, to make it move right
5 along.

6 So there's a number of other issues we can
7 speak to, but the rest of counsel should speak to
8 the date and the length of trial.

9 THE COURT: All right. Let me ask
10 Mr. Braun: I didn't ask you how long you think this
11 trial would take. What is your estimate?

12 MR. BRAUN: The government agrees that it
13 will probably take four to six weeks.

14 THE COURT: All right. Thank you.

15 Mr. Blackburn.

16 MR. BLACKBURN: Your Honor, on behalf of
17 Greg Hill, and also talking a little bit about, as I
18 indicated before, I had consulted with Mr. Nash in
19 preparation for today's hearing, and we worked on
20 the status memorandum.

21 I think that everybody -- counsel has
22 met -- all defense counsel met. And it's our belief
23 that it would take at least, in our opinion, if the
24 government takes four week, it's our belief that the
25 case will take a minimum of six weeks. I just

1 believe, in talking to everybody, that a six-week
2 estimate is going to give us the appropriate time in
3 order to do this.

4 Number one, I rely upon the statement set
5 forth in the status memorandum. Mr. Nash has a
6 trial in January that's already been set, where his
7 client is in custody.

8 I have a trial that starts in early
9 January that will not interfere with this. But it's
10 a little bit difficult to do a first degree murder
11 case and then turn around and do a six-week trial
12 thereafter, in particular based upon --
13 unfortunately, I think everybody that's in this
14 courtroom has a -- it's just the nature of the
15 beast -- has a full plate between now and January
16 anyway, with a number of trials.

17 I'm going to do a six-week trial with
18 Judge Brack in October in Las Cruces. So we do have
19 to find some periods in between there to do these
20 other issues.

21 And I'm going to ask the Court to set a
22 trial maybe a year from today for this reason: The
23 people who are going to be in charge of the wiretap
24 is Mr. Nash, myself and Mr. Jarvis' counsel, in
25 conjunction with Scott Davidson, who is the

1 administrative counsel in this case, and with one of
2 the experts that we have consulted within this case.
3 But it's our belief, with all due respect, that the
4 earliest that we can have this motion ready to go
5 would be -- is in December. And it's set forth in
6 the status memorandum that was provided by Mr. Nash.

7 We have to look at -- we have to get -- in
8 order to do the necessity requirement and in order
9 to be able to get an appropriate hearing, I think we
10 have to file the appropriate affidavits under
11 Franks, in order to make a showing to the Court.

12 Obviously, one of the other issues we're
13 going to have to address is the manner and method in
14 which -- related to the individuals that gave the
15 information concerning the wiretaps and whether or
16 not those should be produced. I know this is just a
17 status conference, so I don't want to belabor the
18 point.

19 But I think the lawyers, as the Court
20 knows, that are here can speak in good faith and
21 state that under the circumstances, we believe that
22 it will take us until December to get that file.

23 Having said that and giving the government
24 some chance to respond over the holidays, then we
25 could hear the wiretap motions sometime --

1 Mr. Mitchell said January. However, the problem
2 with that is that because Mr. Nash is taking a
3 rather large lead in this particular motion, he's
4 unavailable, as he set forth in his status
5 memorandum, for the month of January.

6 So one of the things that we could suggest
7 is that we use the time in January or February that
8 the Court has set aside to handle some of the other
9 motions and housekeeping matters and then maybe have
10 a status conference -- or maybe have the wiretap
11 motion sometime in February.

12 I'm not suggesting that -- I'm just using
13 this as an example, having tried a number of
14 multidefendant, multicounty indictment cases. And
15 just recently one in Arizona that involved the US
16 Attorney's Office here, was that based upon the
17 number of conflicts with counsel, other people's
18 schedules, the presiding judge who took over the
19 case in Arizona, along with Judge Bolton, sat down
20 and said, "Here's the deal."

21 Because that case was going to take two to
22 three months, what they did was they said, "Here's
23 the deal: We're going to give you a trial date."
24 Basically, it was a year to the date. And
25 therefore, that will give you plenty of time to go

1 get all your conflicts taken care of. No vacations.
2 You can go do your summer -- all these other issues,
3 and there will be no continuances from that because
4 you can take this order today, and you can go to all
5 of these other judges and say, "This was set under
6 these terms."

7 I say that because with all due respect, I
8 think everybody in this courtroom has cases
9 scheduled between now and December and January that
10 are already on the plate, and it's going to be
11 difficult to juggle both situations.

12 And that gives us more time to work on
13 this case. There are, as I understand,
14 approximately 20 to 22 outstanding motions that we
15 will comply with the Court's request to provide you
16 with which of those motions need to be heard, which
17 of these motions need to be joined in.

18 Of the 150,000 pages of discovery, 260
19 hours of wiretaps, if we could have identification
20 of which of those wiretaps -- for instance, there's
21 a couple that are just hang up calls. And while we
22 understand that that's not appropriate, but there
23 are a lot of -- there are a lot of times in there
24 that there are conversations that if we knew that
25 there would be some identification on, that it would

1 make these things go a little bit easier.

2 In cases that I've done in this district,
3 and in particular just recently with Judge Armijo, I
4 know she has a practice of having the government
5 give a witness list and also their -- a witness list
6 and their exhibit list. A trial notebook,
7 basically, that she has the government provide to
8 the Court and the defendant or defense counsel 30
9 days before trial. Those are on just one defendant
10 cases.

11 That seems to work. And she then sets
12 deadlines thereafter that parties have to set --
13 have to file objections, and then objections are
14 heard prior to trial.

15 As the Court well knows, if we're going to
16 do a four- to six-week long trial, we want to have
17 as much down time at the bench as possible because
18 the Court has been through this before. You know
19 how jurors get a little antsy when we're spending
20 out here a lot of time.

21 The further we move these dates back --
22 and that's why I say 90 days. The further we move
23 these dates back to give us an opportunity to know
24 what witnesses or what exhibits, and if we have a
25 trial notebook or identify those exhibits, then if

1 the Court sets a deadline that we have to object to
2 those within so many -- within 30 days thereafter or
3 they're deemed admitted, then we have plenty of time
4 to come in front of the Court and have arguments as
5 to those particular exhibits and what should be
6 admitted.

7 I know, in speaking to Mr. Demarest,
8 there's about 37,000 pages' worth of documents that
9 could be under the auspices of exhibits.

10 Am I correct, Mr. Demarest?

11 MR. DEMAREST: Yes.

12 MR. BLACKBURN: And he can address the
13 Court on that because he's our discovery
14 coordinator.

15 Clearly I don't believe, with all due
16 respect, that the government is going to admit
17 37,000 particular -- I hope not -- exhibits. Even
18 if it's in the tune of 500 to 1,000, that still is
19 going to be -- it would give us an opportunity to
20 identify those and not have to make a lot of
21 objections, based upon those that we can identify.

22 And that's why I think, as Mr. Nash put
23 forth in his status memorandum, he talked about the
24 efficiency that would take effect if indeed those
25 could be accomplished sooner, rather than later, and

1 that we don't have to be doing this -- I mean 30
2 days is good. But 30 days, under a case of this
3 magnitude, is going to have us right up against the
4 wall, I would submit.

5 So my request, on behalf of Mr. Hill --
6 and I think that Mr. Kirchner will have his own. I
7 don't want to steal his thunder at this point in
8 time because I know he wants to talk -- is to ask
9 the Court to set a trial setting appropriately July
10 or August of next year and set deadlines 90 days
11 before that. That will give us some time to address
12 all of these issues and will make for an efficient
13 trial in the meantime. That's all, Your Honor.

14 THE COURT: Thank you, Mr. Blackburn.
15 Mr. Sizemore.

16 MR. SIZEMORE: Good morning, Your Honor.
17 Vic Sizemore for Bill Jones. I do not want to be
18 duplicitous or --

19 THE COURT: I appreciate that.

20 MR. SIZEMORE: I know you appreciate that.
21 But I do want to make one point. All my
22 colleagues -- I've worked with every lawyer at both
23 tables in this courtroom. And in 1995,
24 Mr. Blackburn and I were involved in the longest
25 trial in this district, which was the Aguirre drug

1 conspiracy and money laundering case out of Deming.

2 We didn't -- although Judge Conway, I
3 thought, did a great job. But we did not, and I
4 sure wouldn't say anything else, standing before
5 you, but that and making a record, and he did. But
6 that trial went on for seven months, including the
7 time the jury was out. We had 387 witnesses, and I
8 can't remember how much documentary evidence we had.

9 THE COURT: How long was the retrial?

10 MR. SIZEMORE: About six weeks. But a
11 good former colleague of mine, a judge in Midland,
12 Texas, Judge Button, tried that case.

13 THE COURT: Yeah. I thought that was four
14 weeks. But anyway.

15 MR. SIZEMORE: Was it four weeks? Okay,
16 I'm sorry. My client was acquitted in the first
17 trial, and they didn't retry him.

18 MR. BLACKBURN: It started November 4th,
19 and the jury came back the week before Christmas.
20 And my daughter was born in the middle of this
21 trial. And we were doing four days a week, by the
22 way. That was something we didn't discuss. But
23 that's how long the retrial took.

24 THE COURT: Yeah, I recall it was four
25 days a week, with Fridays to take other matters up.

1 MR. SIZEMORE: We did that in that Aguirre
2 case, too, four/ten, four days, ten hours a day.

3 All I was going to say is that everything
4 that the government could provide us ahead of time,
5 should this all come to pass with the 90 days and so
6 on, that we could expect those things, I think we
7 could stipulate and eliminate a lot of witnesses.

8 The jury in that case, the government
9 had -- I can't remember how many -- I forget the
10 name right now. The custodian of records testified
11 from all these various savings and loans and banks
12 and all that, and it became more like a civil trial
13 than it was a criminal trial.

14 So all I can say, Your Honor, is I really
15 feel that my colleagues have set that forth, and
16 that's a great idea. If we could do that, I think
17 we could save the Court time, the jury time, the
18 government time and defense counsel time.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Sizemore.

21 Mr. Gorence, do you have any comments?

22 MR. GORENCE: I have nothing to add, Your
23 Honor.

24 THE COURT: Thank you.

25 Mr. Davidson, any comments?

1 MR. DAVIDSON: I have nothing to add. I
2 think what Mr. Mitchell and Mr. Blackburn said
3 regarding the timing for the wiretap motion is
4 accurate.

5 And I also agree with, in substance, what
6 Mr. Nash said in his status memorandum about the
7 time frame for filing that. And I think he
8 explained in that memorandum the steps that need to
9 be taken when you're challenging a necessity
10 element. And I think he also noted that those steps
11 can't be compressed. It's one after the other.

12 And perhaps Mr. Kirchner, by phone, would
13 like to address that.

14 THE COURT: And I will call on
15 Mr. Kirchner in just a moment.

16 Let me ask Mr. Demarest, do you have
17 anything to add?

18 MR. DEMAREST: Not unless, on behalf of
19 counsel here, to explain further, no.

20 THE COURT: And I assume, Ms. Neal-Post,
21 you agree with Mr. Mitchell's comments?

22 MS. NEAL-POST: I do agree with
23 Mr. Mitchell's comments and Mr. Blackburn's.

24 I would just like to point out that
25 defense filed a motion way back on December 29,

1 2006. It's Document 836, I believe. Yes, that's
2 correct.

3 THE COURT: Document number what?

4 MS. NEAL-POST: 836. And it's just a
5 formal request that we made way back, asking for
6 release of the government's exhibits and witness
7 list for its case in chief so we could get going on
8 that.

9 We've been advised on the latest discovery
10 that we may have another suppression motion coming.
11 And it's discovery that is from an incident in 2003,
12 and we didn't have it released to us until February
13 of 2008. So the sequential releases have caused us
14 to be a little bit behind the curve on some of these
15 things that we need to address in writing.

16 So we could really be assisted if we could
17 get going on getting all the rest of the releases
18 from the government so we could write the motions
19 and not delay the trial setting.

20 THE COURT: All right. Thank you.

21 Mr. Kirchner.

22 MR. KIRCHNER: Thank you, Your Honor.

23 I'm not too worried about Mr. Blackburn
24 having stolen my thunder here. I won't repeat what
25 he has gone over.

1 The only thing I did want to highlight
2 from the memorandum that we filed is the usual
3 course that we take in pursuing wiretap motions, the
4 seriatim nature of it, where obviously we don't
5 start out knowing what's right and what's wrong. We
6 have to ask the folks who are involved, usually
7 starting with the person who is the primary
8 telephone holder and the other defendants, other
9 people who would know something about the case.

10 From there, very often we then have to
11 file a motion for further disclosure from the
12 government, which is usually opposed, and could
13 result in a series of hearings. And depending on
14 the outcome of those hearings, we have more or less
15 information to put in the wiretap motion and so
16 forth.

17 So although it sounds like it would be an
18 easy thing to get done by October, I think certainly
19 with the schedule that we have and probably the
20 other attorneys have in the case, I do not think it
21 would be realistic to be done in October.

22 Stating, of course, that we don't know
23 where all of this will lead us. Maybe there will be
24 no motion. But presumably, it will take as long as
25 the others that we have done took. And I would

1 think that December would be a much more realistic
2 time for getting all of that done.

3 Mr. Blackburn also, of course, noted that
4 we have a conflict in January, where it looks like
5 Walter and I are going to be involved in a full
6 month trial. So we would really prefer that any
7 hearing on the wiretap motion be set after that,
8 probably in February.

9 The only other thing I would turn to is
10 the issue of the early disclosure. I would just
11 echo the remarks of the other folks, that it would
12 make a lot of sense now to weed out what we really
13 have to deal with, what we don't, and for us to
14 concentrate on those things.

15 And as you can see in that memorandum, we
16 have sort of offered a quid pro quo here, which is
17 any things that we don't challenge could basically
18 be deemed admitted. And that would save us a huge
19 amount of time having to go through stuff that the
20 government doesn't even intend to offer.

21 Conversely, it would save the government a
22 lot of time later, having us challenge things that
23 it doesn't even need to offer. And it would save
24 the Court a tremendous amount of time having to go
25 through all of those things that would be wasted.

1 So we would ask that we get that
2 disclosure as quickly as possible, maybe 90 days
3 before trial. But really, it seems to me that it
4 could be even earlier than that, with the government
5 reserving the right to modify its list as need be up
6 until a certain amount of time before trial.

7 And you know, the other thing that I would
8 point out is I think some of the folks had talked
9 about 70- or 80,000 pages of disclosure. My
10 information, and I don't know this first hand, but
11 we talked about it before. And I do believe that
12 the disclosure is probably almost double that, maybe
13 150,000 or 180,000 pages of disclosure. So it's a
14 huge amount for us to for through.

15 Anything that could be done to pare that
16 down would really be the best thing to do to get
17 this trial on track. And summer of next year seems
18 appropriate to us. One year from today or even any
19 time in the summer I think would be appropriate.

20 THE COURT: All right. I think I have
21 called on everyone.

22 Let me ask Mr. Braun what your position is
23 on the early disclosure.

24 MR. BRAUN: Your Honor, as I said, the
25 government agrees that early disclosure would be

1 beneficial to the extent that it allows the parties
2 to stipulate on exhibits. We believe that 30 days
3 is a substantial amount of time. Ninety days is
4 excessive. Perhaps 45 days would be better.

5 That would allow the parties to review the
6 exhibit lists, decide on what they're going to
7 object to and file something within, say, two weeks,
8 and give the Court time to rule on those objections
9 prior to trial.

10 I would ask only that it be reciprocal;
11 that if the government has to disclose a witness and
12 exhibit list, that the defense should as well.

13 As the Court is well aware, this is not a
14 new case. We had a trial setting for April 10th of
15 2007. That wasn't stayed until mid-February of '07.
16 Why we now need another year to get ready for trial
17 is beyond me.

18 I think a January setting is perfectly
19 reasonable. I think that two months to prepare a
20 wiretap suppression motion is perfectly reasonable.
21 And I would ask that the Court keep the current
22 trial date and set deadlines accordingly.

23 THE COURT: What about the request or
24 suggestion that the government identify specific
25 wiretaps so that the defense could focus on those?

1 MR. BRAUN: We had actually already agreed
2 to that, Your Honor. That was part of the James
3 hearing disclosures that the government was going to
4 make. Previously, the James hearing was set for
5 March 6th of 2007, I believe.

6 And the government had agreed and the
7 parties had agreed that we would disclose the list
8 of co-conspirator statements, which included all the
9 wiretap calls that would be introduced, two weeks
10 prior to that hearing. And the government stands by
11 that disclosure deadline.

12 If the Court sets a James hearing for,
13 say, November, we will disclose all of the calls
14 that we're going to use two weeks prior to that
15 setting. That gives the defense a substantial
16 amount of time prior to trial to know what they're
17 going to be defending against, as far as the wiretap
18 calls.

19 THE COURT: All right. Thank you,
20 Mr. Braun.

21 Does anybody else have any comment on
22 these scheduling issues?

23 Mr. Gorence.

24 MR. GORENCE: Your Honor, I just wanted to
25 echo what Mr. Blackburn said. I don't want to get

1 into specifics, but I mean a January trial date
2 with -- I have -- I mean there's a lot of other
3 pending cases. I would just ask that you set it far
4 enough out in advance so that it then gets blocked
5 off.

6 And I know Mr. Mitchell's suggestion of a
7 year, there's nothing on anybody's calendar really
8 next summer. Judge Armijo has set one of the
9 alleged AB cases. I'm involved in that. That's
10 April. I have -- I mean I won't get into my
11 schedule, but I have distinct and very difficult
12 conflicts with cases that are perhaps as old as
13 this, but have been long set.

14 And I think every other, in talking to
15 co-counsel, has problems with January. That's the
16 only issue. It's not that we couldn't be ready.
17 It's just that it's -- and not that the Court isn't
18 fair by saying six months out.

19 But six months, with as many lawyers as we
20 have, really doesn't give us the opportunity to
21 clear all our schedules for an undertaking that
22 everyone concedes is going to take approximately six
23 weeks. That's really a problem and why we're asking
24 for a date far out, so that we can clearly just
25 block it off. That's my problem.

1 MR. BRAUN: Your Honor, I'm sorry. If I
2 could just address one other thing.

3 THE COURT: Yes.

4 MR. BRAUN: The recent discovery that
5 Ms. Neal-Post mentioned. We had heard during the
6 course of this investigation of a time when
7 Mr. Jarvis left a backpack or something like that at
8 a hotel in Tucson a number of years ago, but we
9 hadn't found any reports related to that.

10 Just a few weeks prior to the disclosure
11 of this discovery -- and Ms. Neal-Post said it was
12 February of this year. I'll just assume that's
13 accurate. A few weeks prior to that is when agents
14 finally found the reports of that incident and some
15 photographs related to it. And shortly after
16 discovering it and obtaining the reports, we
17 disclosed them to the defense.

18 And that's what we do. As we obtain
19 additional discovery, we disclose it.

20 THE COURT: All right. Any other comments
21 on scheduling?

22 MR. BLACKBURN: I just have one briefly,
23 Your Honor. And obviously, there are three lawyers
24 in this case who are new to this case, myself,
25 Mr. Sizemore and Mr. Mitchell. And you know, I'm

1 unfamiliar with all of the previous settings that
2 the Court has made in this case, and I rely upon
3 Mr. Braun's statement.

4 But there are 150,000 pages of discovery.
5 And a six-week trial for some of us who have been on
6 this case less than a year now, obviously, we
7 understood when we got into this case that we would
8 get to this point in time when the Court would set
9 this. But we haven't been on this case since --
10 working on it since the government has, in 2003 and
11 beforehand or whenever it was.

12 And I just think that setting, as I have
13 indicated and Mr. Kirchner and Mr. Gorence have
14 indicated, by setting this at a date far enough in
15 advance, that we can actually really prepare this
16 case is advantageous to everybody, without having to
17 file last-minute motions.

18 I mean as the Court knows -- I mean if
19 we're going to do -- if I'm going to do a six-week
20 trial with Judge Brack in Las Cruces during the
21 months of October and November, with all due
22 respect, I'm not going to be spending a lot of time
23 looking at the discovery or helping as much as
24 possible as I can on the wiretaps.

25 That's because of the situation we're in

1 now for all of the trials that have been scheduled
2 between now and then. This case is old. But
3 most -- other than Mr. Jarvis, these individuals are
4 out of custody. And I would just request that the
5 Court set the case far enough out past January that
6 we can have a reasonable amount of time to address
7 all of these other issues.

8 And I think that again, as set forth in
9 the status memorandum, as you heard from
10 Mr. Davidson what we have to do on the wiretap
11 issues. That's all I have, Judge.

12 THE COURT: All right. Well, I will take
13 all this information into consideration, and I'll
14 set some deadlines and I'll look at the trial date.
15 And I'm just going to tell you I'm going to set
16 things. I'm just going to set them.

17 And if you all have conflicts, you're
18 going to have to let me know about that. And I
19 recognize the fact that you all are busy lawyers and
20 you have other matters on your calendars. But we
21 need to get some deadlines going on this case. We
22 need to get this case tried.

23 And so I'm going to do my best to set
24 deadlines. And if I set a James hearing at a time
25 when one of you is unavailable, then you just need

1 to let me know that, and I'll see whether or not I
2 can realistically change things.

3 But you know, I'm hoping I can get things
4 set so that you all can get this case going and we
5 can get this thing tried. So I will get back to you
6 on the scheduling order.

7 MR. MITCHELL: Judge, can you give us a
8 deadline when you want that request, as to which --
9 your request to prioritize our motions and which
10 motions need to be heard, do you want that in the
11 next week? We can get it to you by next Friday.

12 THE COURT: The sooner, the better. If I
13 don't get it from you -- you said this Friday.
14 That's great.

15 MR. MITCHELL: Not this Friday, next
16 Friday.

17 THE COURT: I'm sorry. Next Friday,
18 the 15th. Well, if I don't hear from the others,
19 then we'll be making some phone calls.

20 MR. MITCHELL: Well, I think Mr. Jarvis is
21 the one that's going to take the lead on that. So
22 Jody and I will get that ready for the Court and get
23 it to you by next Friday.

24 THE COURT: All right.

25 MR. BRAUN: And just so the Court is aware

1 when setting the James hearing, that may take three
2 days or so.

3 THE COURT: All right. Well, thank you
4 for your attendance this morning, and we'll be in
5 recess.

6 Ms. Neal-Post, can I see you in the
7 vestibule for just a few moments?

8 (Court in recess at 10:33 a.m.)

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